

Before The
FEDERAL COMMUNICATIONS
COMMISSION
Washington, D.C.

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JUL 8 - 2004

FCC - MAILROOM

In the Matter of) MM Docket No. 99-331
) RM-9848
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Madisonville, and)
College Station, Texas))

To: Assistant Chief,
Audio Division
Media Bureau

Opposition to Request for Waiver

Sandlin Broadcasting Co, Inc. (Sandlin), licensee of Station KMKS(FM), Bay City, Texas, by its president, hereby files its Opposition to Request for Waiver (Opposition) in response to the June 23, 2004 pleading of Garwood Broadcasting Company of Texas ("Garwood") in this proceeding, entitled "Request For Waiver (Request)."

Garwood's basis for its Request of the Commission's rule of its backfill policy is not in the public interest. No special circumstances exist to justify a waiver. Garwood's Request relies on redundant information already presented in this proceeding and would undermine the policy objectives of the backfill rule.

Garwood, as a Joint Petitioner for Clarification of the backfill policy, has already received its clarification of the Commission's rule of its backfill policy, see FCC 04-140, pg.8, "Here, we have determined that the public interest is best served by

the modifying our “backfill” policy in resolving all pending changes of community of license rulemaking proposals; we therefore reject petitioners contention that we may not apply the new policy to pending proposals”.

The pleading cycle has past. Sandlin has already presented facts that the Garwood Petition for Reconsideration (Petition) is defective and contrary to the public interest. Garwood is attempting to advance a *new counterproposal* into this proceeding. Garwood’s Petition has lead to spectrum entanglement and delays in additional service.

Garwood’s counterproposal, in this proceeding, was denied and the proceeding terminated as released by the Commission January 21, 2003 (see DA 03-144). On February 11, 2003, the Commission released it decision on the backfill policy, (FCC 03-18). February 20, 2003, nine days after the Commission’s backfill decision, Garwood filed its Petition for Reconsideration in this proceeding. The Garwood Counterproposal failed. There has been no new information provided by Garwood in its Petition for Reconsideration to change the outcome of the Commission’s prior decision.

Garwood, in its Request, points out the gains but fails to show the losses in its Petition.

- a. Garwood’s Petition proposes the temporary removal of the existing sole service 259C2 at Palacios and backfill with 264A and**
- b. Deleting existing KGUL 241C3 at Edna. KGUL is the only full-time aural service, Priority 1. Edna is also served by KTMR-AM a 10kW Daytimer. KTRM is Edna’s first local aural service, Priority 3, and**

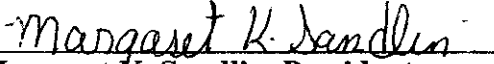
- c. **Garwood's Petition has delayed service to Sandlin's community. Sandlin has pending before the Commission a Minor Modification to its facility to increase its service from C2 to C1 (BPH-20030206ACK). Sandlin's Minor Modification is listed as Blocked due to rulemaking hold, (See; <http://www.fcc.gov/mb/audio/status/blklist.html>). Garwood filed an Informal Objection on 3/17/2003 against the approval of Sandlin's Minor Modification. Garwood's Petition is defective. Garwood is attempting to advance a new counterproposal into this proceeding. In its Counterproposal Garwood proposed allocating a C2 to Bay City, now Garwood proposes in it Petition to allocate a short spaced C1, and**
- d. **In order to show the *short spaced* C1 for allocation at Bay City, Garwood's Petition is Contingent upon the Commission grant of a Minor Modification (BPH 20030219ADS) filed after the dismissal of the Counterproposal in the proceeding in which LaGrange Broadcasting Corporation (LaGrange) proposes to reduce service of KTXM 260A at Hallettsville from 3.4 kW to .95 kW. The change requested by LaGrange at Hallettsville would result in a loss of coverage and population served by KTXM should the commission approve the Minor Modification proposed by LaGrange and**
- e. **Disrupting service at Columbus by moving KULM from channel 252A to 273C1.**

There are more losses than gains in Garwood's Petition.

Sandlin will not address the issue of warehousing raised by Garwood in its Request because the Commission has made clear its expectation of Sandlin in its Report and Order terminating this proceeding. In DA 03-144 page 4, paragraph 6 the Commission said: *“ As it is Commission policy not to downgrade a station to accommodate another station’s desire to upgrade, absent an agreement from the affected station consenting to the downgrade, we will not favorably entertain the proposed substitution at Bay City. Accordingly, we deny the counterproposal filed by Garwood Broadcasting. Garwood Broadcasting did not provide an alternate C1 channel for use at Bay City. Had Garwood Broadcasting proposed the substitution of an alternate C1 channel for Channel 273C1 at Bay City, a separate Order to Show Cause could have been directed to Sandlin Broadcasting requesting a showing as to why the license for Station KMKS should not be modified to specify operation on a different channel. In the event Sandlin Broadcasting does not activate Channel 273C1 at Bay City as represented in this proceeding, we would consider a proposal to downgrade Station KMKS to specify operation on a class C2 channel.”* Sandlin intends to upgrade its service upon Commission approval of its Minor Modification request.

The Request by Garwood is not in the public interest. Garwood’s request has no basis or merit and should be dismissed or denied, if considered at all. In the public interest this proceeding should be terminated.

**I verify that the above statement is true and correct to the best of my
knowledge and beliefs and is submitted in good faith.**


**Margaret K. Sandlin, President
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JULY 7, 2004

CERTIFICATE OF SERVICE

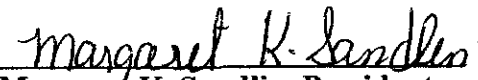
I, Margaret K. Sandlin, do hereby certify that copies of the foregoing "Opposition to Request for Waiver" this 7th. Day of July 2004, upon the following:

Sent by Federal Express Courier To:

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